IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.255 OF 1996

Gurnamsingh Ajit Singh,
33, Plot No.115, Sham Nagar
Extension, New Delhi. ...Petitioner

Versus

1.Asstt.Collector,
Customs (P), New Custom House,
Bombay.
2.The State of Maharashtra ...Respondents

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Mr.C.S.Kotwal with Mr.S.V.Kotwal & Ms.Nilam V.Masand for Petitioner.

None for Respondent No.1.

Mr.K.V.Saste, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

MARCH 10, 2005.

ORAL JUDGMENT :

1. Heard Mr.Kotwal for the Petitioner.

2. This matter had reached for hearing on 25th February 2005. However, as none appeared for the contesting Respondent No.1 and formidable point was raised, I thought it appropriate to defer the hearing to 28th February 2005, as part-heard matter. The matter has thereafter appeared on Board, but has reached for hearing only today. Once again, today, none appears for the contesting Respondent No.1. In this peculiar situation, I have no option but to proceed with the hearing of the case, as it pertains to year 1996.

3. The Petitioner has been convicted and sentenced by the Chief Metropolitan Magistrate for offences punishable under Section 135(1)(a) and 135(1)(b) read with 135(1)(i) of the Customs Act, 1962 (hereinafter referred to as the 'Act') and under Section 5 of the Imports and Exports (Control) Act, 1947.

4. The Petitioner was arrested at the Airport on his arrival from Singapore by Air India Flight No.AI-425, as it was noticed that the grey card

board carton carried by the Petitioner contained Micro Wave Oven of Sanyo make, wherein, two moulded gold blocks weighing 583 grams were concealed. It is not necessary to burden this Judgment with the facts of the case, as, learned Counsel for the Petitioner has fairly accepted that it will not be possible for him to persuade the Court to take a different view than the concurrent view taken by the two Courts below, that too, in exercise of revisional jurisdiction.

5. The only argument canvassed before me is regarding the question of sentence. The Trial Court has rejected the Petitioner's plea for showing indulgence in awarding sentence less than minimum one year's sentence provided for, by Section 135 of the Act. The Trial Court has observed that the grounds stated by the Petitioner were not special and adequate reasons, so as to impose sentence lesser than one year's term provided by the Statute. The Trial Court imposed sentence as stated in the operative part of its order dated 6th December 1995, which reads thus:

"The accused is convicted of the offence punishable under Section 135(1) (a) read with Section 135(1) (i) of the Customs Act and is sentenced to suffer R.I. for one year and to pay a fine of Rs.10,000/- in default S.I. for three months.

2) The accused is further convicted of the offence punishable under Section 135(1)(b) read with Section 135(1)(i) of the Customs Act and is sentenced to suffer R.I. for one year and to pay a fine of Rs.10,000/- in default S.I. for three months.

3) The accused is also convicted of the offence punishable under Section 5 of the Imports and Exports (Control) Act and is sentenced to suffer R.I. for six months and to pay a fine of Rs.10,000/- in default S.I. for three months.

4) Set-off be given for the custody period.

5) Substantive sentences to run concurrently.

6) Passport of the accused be returned to the concerned Passport authorities after the expiry of appeal period."

6. The Appellate Court confirmed the view taken by the Trial Court, not only on merits, but also on the point of sentence, by dismissing the appeal preferred by the Petitioner vide order dated 12th August 1996.

7. Mr.Kotwal for the Petitioner submits that although the Statute provided for minimum sentence of one year's imprisonment at the relevant time, however, the proviso to Section 135(1)(i) is an enabling provision, permitting the Court to award lesser sentence by recording special and adequate reasons therefor. Mr.Kotwal is, however, conscious of sub-section (3) of Section 135 of the Act, which provides that grounds stated in clauses (i) to (iv) of the said sub-section, cannot be pressed into service, as special and adequate reasons. He, therefore, submits that the grounds which are now available to the Petitioner, being outside the grounds referred to in sub-section (3), can receive due consideration of this Court. According to him, it is relevant to take into account the fact, which is a matter of record that the Petitioner's financial condition is not very sound. He was employed in a private Company, drawing salary of only Rs.1,000/- (Rupees One Thousand) at the relevant time and had to look after his family, which was entirely dependant on his earning. It is a matter of record that although the Petitioner was released on bail, he could not avail of bail,

essentially because of his financial disability. Moreover, the Petitioner has already suffered the sentence for a period of five months and five days so far.

8. In this backdrop, it is submitted that as the offence in question took place almost more than 15 years back, and with passage of time, there has been legislative changes, recognising import of gold up to 5 kgs., it would be appropriate to take a lenient view of the matter, in the peculiar facts of the present case, so that, the sentence awarded by the lower Courts be modified to one already undergone by the Petitioner, to meet the ends of justice.

9. To support his submission that passage of time is a valid consideration, reliance is placed on the decision of the Division Bench of our High Court reported in **2002(1) Bom.C.R. 544 in the case of State of Maharashtra vs. Mollulla Purayil Pookoya Thangal**, wherein, it is observed that as the offence had taken place in the year 1985 and the sentence was awarded against the Respondent

therein in the year 1986, by passage of time, the Respondent must have settled in his life and must have gained roots in the Society. The Court then went on to observe that it will not be just to uproot him from the Society, after lapse of more than 15 years.

10. Having considered the submissions of the Petitioner and going through the record of the case, it is obvious that the grounds which are now pressed into service for showing leniency to the Petitioner, were not pressed into service on behalf of the Petitioner before the lower Courts. Before the Trial Court, it was argued that the Petitioner was already in custody for about 40 days during investigation and trial and that, he was regularly attending Court proceedings for five years from Delhi and that, while he was in judicial custody, his father died. Those grounds, in my opinion, have been rightly described by the Trial Court as not special and adequate reasons to show leniency and to award sentence lesser than minimum sentence of one year provided by the Act.

11. However, I am inclined to accept the argument of the Petitioner on the grounds now pressed into service before this Court that the Court may reckon the financial condition of the Petitioner and that, the Petitioner has already undergone sentence for a period of five months and five days so far, more importantly, because of the distance of time between the date of offence and the date on which the proceedings were to be finally concluded before this Court.

12. The view that I propose to take, is reinforced by the dictum of the Division Bench of our High Court in the reported case referred to above. Indeed, the said observations have been made in an appeal against acquittal. Nevertheless, the principle underlying that view can be adopted in the fact situation of the present case, to meet the ends of justice. For, even in the present case, the date of offence is stated to be 2nd May 1990 and the sentence was awarded by the Trial Court as back as on 6th December 1995. Indeed, it can be assumed that the Petitioner must have settled in life and must have gained roots in the

Society. There is nothing on record to show that the Petitioner has indulged in similar offence or for that matter, in any criminal case after he was released on bail in connection with the present offence.

13. Accordingly, for the abovesaid reasons pressed into service before this Court, this Revision ought to succeed by modifying the sentence passed by the lower Courts, so as to reduce the same to one already undergone by the Petitioner, in the peculiar facts and circumstances of the case. Ordered accordingly.

14. Petitioner’s bail bond stands cancelled.

15. Revision Application disposed of on the above terms.

A.M.KHANWILKAR, J.